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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7020 of 2007

M/s. New Model Talkies & Anr. ...Petitioners

V/s.

Arun Babu Trikal ...Respondents

Mr.J.P.Singh for the Petitioners
Resopndent in person present.

CORAM : B.H.MARLAPALLE,J.
DATED : 19th December, 2007

P.C.

Heard Mr.Singh, the Learned Counsel for the Petitioners. The Petitioner No.1 is a partnership firm and Petitioner No.2 is one of its Partners. The Petitioners are aggrieved by the order dated 31-1-2007 passed by the 9th Labour Court at Mumbai, thereby allowing the recovery application filed under Section 33C(2) of the Industrial Disputes Act,1947.

2. The Respondent workman had approached the Labour Court contending that he was working with the Petitioner No.1 Company as an Operator from 27-11-1994 and was in service till 20-11-2002. On 21-11-2002 the Petitioner No.1 closed its operations without complying with the provisions of law. Even otherwise at the time of closure, the compensation amount was sought to be paid

by cheques which were dishonoured. It was further stated that the Company had not paid the dues of earned wages from July 2002 till the closure of the business and no retrenchment compensation, notice pay and bonus for the year 2001-2002 including provident fund contribution was paid to the applicant. He, therefore, sought the recovery of Rs.93,654/- under different heads as under:-

(a) Notice pay Rs.5000/-. (b) Retrenchment compensation Rs. 20,000/-. (c) Bonus for the year 2001-2002 Rs.5000/-. (d) Earned wages Rs. 23,499/-. (e) Provident fund contribution deducted by the opponents from the salary for the period from January 1995 to June 2002 Rs. 40,155/-, total amounting to Rs. 93,654/-.

3. The Petitioners appeared before the Labour Court and filed written statement. The application was opposed on the preliminary point of its maintainability as well as on merits. It was further contended that the applicant was paid initial sum of Rs. 11,000/- by cheque which was dishonoured and subsequently he was paid in cash by way of voucher. The Company further denied that the applicant was working as an operator on 27-11-1994 and that he was drawing salary of Rs. 5100/-.

4. On the point of maintainability of the application under Section 33C(2) of the I.D.Act, it was contended by the Petitioners that a group of workmen including the applicant had filed Complaint(ULP)No. 1082/2002 and the same came to be withdrawn and hence the bar of Section 59 of the MRTU & PULP Act would operate against the application filed for recovery of money dues. The Learned Judge of the Labour Court perused the reliefs prayed for and noted that in the said complaint what was challenged was the illegal lockout and closure by a group of workmen and the complaint was disposed as withdrawn. On both these counts, the Labour Court held that the bar of Section 59 would not operate in the instant case. In my considered opinion, the said finding cannot be termed as illegal.

5. So far as payment of Rs. 11,000/- by cash is concerned, the Company failed to prove the said voucher before the Labour Court. The Company did not produce the concerned record like the wage registers, leave registers, registers maintained under the Payment of Bonus Act as well as the Provident Funds Act. On the other hand, the Petitioners remained absent and failed to discharge their burden. The applicant had stepped in the witness box insupport of his case and he was not cross examined to disprove his contentions as the applicant company remained absent or did not appear

inspite of notice.

6. Even in this petition nothing has been brought on record to prima-facie believe that the details of calculations as set out by the applicant in his application in the Labour Court were erroneous or required reconsideration. By remaining absent before the Labour Court, the Petitioners invited the exparte order and though it was passed on 31-1-2007, this petition is filed on 13-9-2007 which is obviously belated.

7. I am, therefore, satisfied that in this Petition filed under Article 227 of the Constitution, the impugned order passed by the Labour Court does not call for any interference and hence the petition is rejected summarily.

[B.H.MARLAPALLE,J.]